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NSC review completed - may be declassified in full

Presidential Directive/NSC-19

TO:           The Vice President  
              The Secretary of State  
              The Secretary of Defense

ALSO: The Attorney General  
       The Director of Central Intelligence  
       The Chairman, Joint Chiefs of Staff

SUBJECT:      Electronic Surveillance Abroad and Physical  
              Searches for Foreign Intelligence Purposes

I have reviewed the issues raised in the report of the Attorney General's PRM/NSC-11 Subcommittee to the SCC with respect to warrantless electronic surveillance directed against United States persons abroad, and warrantless physical searches (a) of certain premises or property within the United States and (b) of the premises or property of United States persons abroad. It is my understanding that:

-- These searches and surveillances would be conducted solely for foreign intelligence and counterintelligence purposes, including intelligence on international terrorism.

-- It is the Attorney General's view that the President has the constitutional authority to (a) approve warrantless electronic surveillance directed against Americans abroad who are agents of foreign powers and (b) approve reasonable warrantless physical searches directed against foreign powers or their agents in the United States and against Americans abroad who are agents of a foreign power. Since, however, no court has ever recognized this authority, the Attorney General's opinion is subject to judicial challenge.

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Classified by: Z. Brzezinski

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It is clear to me that reasonable physical searches and electronic surveillances for intelligence purposes necessary to the security and well-being of our nation should be authorized. The invocation of inherent Presidential powers to authorize such searches and surveillances, however, would subject such searches and surveillances to doubt and question not only by those who are concerned about the proper role of our intelligence agencies but also by those who must carry out the searches often at grave risk to themselves.

Therefore, it is my firm belief that this Government's clandestine intelligence activities--and especially those which impact on the rights of Americans--should to the maximum extent possible be legitimized and affirmed by the Congress. Such affirmation is essential not only to reassure the public that our intelligence activities are conducted in a legal and proper manner but also as a policy statement that these activities are necessary and desirable for the security and well-being of the American people. Therefore, I direct that the Department of Justice, in coordination with the Departments of Defense and State, and the Central Intelligence Agency, draft for SCC review and my approval proposed legislation with respect to electronic surveillance abroad and physical searches both in the United States and abroad.

I remain concerned, however, that if compelling situations arise prior to such time as this legislation might be enacted, it may be necessary to the security and well-being of this nation to engage in physical searches in the United States and physical searches and electronic surveillance abroad directed against United States persons. Therefore, pending the enactment of legislation in this area, I delegate the power to the Attorney General and his successors in office, to approve, without prior judicial warrant, electronic surveillance directed against United States persons abroad.

This power and authority shall be exercised pursuant to the following standards and procedures:

- (1) A warrantless, non-consensual electronic surveillance directed against a United States person abroad will, except in emergency situations, only be authorized upon the personal approval of the Attorney General (or Acting Attorney General), upon the request of the head of the Department or Agency desiring the electronic surveillance.

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(2) Approval will not be granted unless the Attorney General (or Acting Attorney General) has satisfied himself that:

(a) the requested electronic surveillance is necessary to obtain significant foreign intelligence or counter-intelligence information;

(b) the United States person who is the target of the electronic surveillance is an agent of a foreign power; and

(c) the minimum physical intrusion necessary to obtain the information sought will be used.

(3) Where necessary, the request and authorization may be oral, but shall be followed by written confirmation as soon as possible.

(4) No electronic surveillance directed against a United States person shall continue for over 90 days without the written authorization of the Attorney General (or Acting Attorney General).

(5) In addition, I authorize the Attorney General to adopt procedures governing the conduct of electronic surveillance abroad, whether or not directed against a United States person, to ensure its legality and propriety, which procedures shall provide for authorization in emergency situations and for the minimization of the acquisition, retention, and dissemination of information concerning United States persons which is not necessary for legitimate Government purposes.

I have already in my February 3, 1977 memorandum authorized and delegated the power to the Attorney General to approve the minimum necessary trespass or intrusion to implant an electronic surveillance device in the United States.

I hereby delegate the power to the Attorney General to adopt procedures concerning, and to approve, certain warrantless physical searches of (a) the real or personal property of foreign powers in the United States, and (b) the personal property of persons in the United States or United States persons abroad who are agents of foreign powers. These physical searches shall be limited to (a) a search of personal property which is in the custody of the United States or its agents, or (b) a search of the premises of a foreign power by an agent of the United States who is lawfully on the premises, which extends beyond those specific areas to which the agent is entitled to have access

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This power and authority shall be exercised pursuant to the following standards or procedures:

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- (1) A physical search of the property or premises of a foreign power in the United States will only be authorized pursuant to procedures adopted by the Attorney General to insure its reasonableness, which procedures shall not authorize any breaking or non-consensual entering of any real property.
- (2) (a) A physical search of the personal property of persons in the United States or a United States person abroad will, except in emergency situations, only be authorized upon the personal approval of the Attorney General (or Acting Attorney General), upon the request of the head of the Bureau or Agency desiring the search.
  - (b) Approval to conduct such a search will not be granted unless the Attorney General (or Acting Attorney General) has determined that:
    - (i) the requested search is necessary to obtain significant foreign intelligence or counter-intelligence information;
    - (ii) the person whose property is to be searched is an agent of a foreign power;
    - (iii) the minimum physical intrusion necessary to obtain the information will be used; and
    - (iv) the search does not involve the breaking or non-consensual entering of any real property and any container to be searched is, at the time of the search, in the lawful custody of the United States or its agents.
  - (c) Where necessary, the request and authorization may be oral, but shall be followed by written confirmation as soon as possible.
- (3) I am not delegating the authority to make any physical search within the United States or of the property of United States persons abroad for foreign intelligence or counterintelligence purposes that involves the breaking or non-consensual entering of any real property or the search of any personal property which is not in the custody of the United States or its agents, except in emergency situations where a person's life is reasonably believed to be in imminent danger.

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